IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1315

ROBERT CALHOUN JR., Plaintiff-Appellant,

-against-

H. SPENCER KUPPERMAN et al.,
Defendants-Appellees

JURISDICTIONAL STATEMENT

Robert Calhoun Jr.
111-11 132nd Street
Jamaica, New York 11420

Attorney for Appellant

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TABLE OF AUTHORITIES CITED

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RELATED CASES

71 Civ 2734 Alice M. Calhoun vs Riverside Research Institute and Columbia University

75 Civ 1565 Robert Calhoun Jr. vs The State of New York et al.

76 Civ 5770 Robert Calhoun Jr. vs United States of America.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

No._____

ROBERT CALHOUN JR., Appellant,

vs

H. SPENCER KUPPERMAN, et al., Appellees.

On Appeal from the United States Court of Appeal
for the Second Circuit

JURISDICTIONAL STATEMENT

Appellant appeals from a final judgement of the United States Court of Appeal for the Second Circuit entered on December 3, 1976. This petition is brought pursuant to 28 USC 1254 (1).

Appellant further invokes Commonwealth Coatings Corp. vs Continental Casualty Co. 393 US 145, 89 S. Ct. 337, 21 L Ed. 2d. 301, and Gumbel vs Pitkin, 124 US 131, 8 S. Ct. 379, 31 L Ed. 374,. This plaintiff pleads for due process of law and some

simple justice.

OPINIONS BELOW

The judgement of the United States Court of Appeal for the Second Circuit is an affirmation of the " Opinion and Order #43384 " rendered by District Court Judge Kevin T. Duffy on November 11, 1976.

JURISDICTION

The decision of the United States District Court granted a motion for dismissal of the complaint and mooted the motion for summary judgement. (appendix B) The United States Court of Appeal for the Second Circuit affirmed this judgement. (appendix A)

STATUTES INVOLVED

This case involves the Domestic Relations Laws of the State of New York, the Constitutional garantees of the Fourteenth Amendment, the Civil Rights Act of 1964, 18 USC 241 and 242 and 42 USC 1983.

These statutes protects citizens from parties or organizations that would deny any one the enjoyment of exercising his rights and privileges that are

garanteed by the Fourteenth Amendment of the Constitution of the United States.

QUESTIONS PRESENTED

Does the appellant have standing to bring this lawsuit against the appellees for defrauding his wife of the benefits of a civil rights lawsuit?

Can a motion that contains fraudulant transcripts and false statements dismiss a complaint and moot a motion for summary judgement?

Does the courts infringe upon the rights of the appellant when it acts arbitrary and partial in favor of the appellees and against the appellant?

Can damages be assessed against the court's own personnel when they violate or infringe upon the rights of a party in a legal proceeding?

STATEMENT OF THE CASE

The appellant has charged the appellees with defrauding his wife, Alice M. Calhoun, of the benefits of her civil rights lawsuit. (71 Civ 2734)

The appellees have failed to deny these charges nor have they defended against these allegations.

The appellant charges the appellees with collusion, conspiracy, fraud and deceit, conspiracy to defraud a client, forgery, misrepresentation and unauthorized representation and making false statements to the court. These charges constitute malpractice and wanton and wilful misconduct on the part of the appellees yet they have failed to contest or deny these outrageous acts of misconduct.

The arguments offered by the appellees to these charges are : the appellant doesn't have standing to bring this action, the court lacks jurisdiction, the appellant fails to state a claim for which relief can be granted, and the law cited does not apply to the case at bar. None of these defenses address the allegations of the complaint nor do they vindicate or explain the actions of the appellees.

The appellant's motion to have the appellees held in default has gone unanswered by the court.

The appellees motion for dismissal of the complaint was brought on before Hon. Kevin T. Duffy on September 17, 1976 where all of the appellees did join in the motion put forth by Skadden, Arps, Slate, Meagher and Flom to dismiss the complaint because the matter had been settled on June 26, 1974 before Hon. Whitman Knapp. The Memorandum of Law in Support of the Motion to Dismiss the Complaint contained a transcript that is purported to be a direct cross examination of Alice M. Calhoun at the June 26, 1974 conference before Hon. Whitman Knapp.

The appellant pointed out to Hon. Kevin T. Duffy that the transcript is defective and fraudulant. Upon request from the court to see the settlement agreement, a Stipulation of Discontinuance was entered with the date of June 26, 1974 on its face with the signatures of the lawyers and one purported to be Judge Knapp's signature. The appellant upon reading and examining the Stipulation informed the court that it too was fraudulant.

The appellant entered a motion for summary judgement on September 18, 1975 in which he included a letter written by Richard M. Schafman to Michael H. Diamond that indicated the Stipulation of Discontinuance was not entered into the Court until July 1, 1974.

A motion by the appellant to have the appellees post security for the damages asked in this lawsuit was not acted upon.

On November 11, 1975, Hon. Kevin T. Duffy issued an " Opinion and Order #43384 " that granted the motion for dismissal and mooted the motion for summary judgement. The appellees have failed to reply to the motion for summary judgement.

A timely notice of appeal was file in the District Court on November 18, 1975. (appendix A) The appeal was argued orally on November 4, 1976 by the appellant without rebut from the appellees. H. Spencer Kupperman and Michael H. Diamond did appear pro se but offered no defense to the charges.

On December 3, 1976, judgement was entered affirming the "Opinion and Order #43384 " issued by Honorable Kevin T. Duffy. The appellant offered a " Notice of Appeal " in the United States Court of Appeal for the Second Circuit on December 15, 1976 but the Appeal Notice was refused by the clerk in the Circuit Court and was advised by the Pro se Clerk that he had no appeal remedy to the judgement.

The appellant then traveled to the Supreme Court of the United States to inquire about his rights of appeal only to find out that his " Notice of Appeal " is proper and that misleading information had been given to him. Upon returning to the United States Court of Appeal for the Second Circuit on December 21, 1976, his " Notice of Appeal " was excepted without comment. (appendix A)

The appellant pleads for this Court's supervision and judgement because of the unaccounted for acts and unexplained irregularities that have occurred in adjudication.

STATEMENT OF THE FACTS

The appellees are charged with acts of collusion, conspiracy, fraud and deceit, and of defrauding a client of the benefits of a civil rights lawsuit. (complaint)

The appellees have failed to deny these charges nor ,have they defended against the charges. (see motions for dismissal)

The plaintiff-appellant pointed out to Hon. Kevin T. Duffy on September 17, 1975 that the motion for dismissal entered by Skadden, Arps, Slate, Meagher and Flom, and joined in by all of the other defendant-appellees, was defective and fraudulant. When the Hon. Kevin T. Duffy asked for a copy of the settlement agreement, a " Stipulation of Discontinuance" was entered by the appellees instead and upon examination by the appellant was found to also be a fraudulant document. (see plaintiff's motion for summary judgement)

The appellant move to have the appellees judged for entering fraudulant evidence into the proceedings.

A motion for summary judgement was entered on September 18, 1975 requesting judgement be entered against the appellees for introducing fraudulant evidence into the proceedings. Rule 56 of the Federal Rules of Civil Procedure require that in a motion for summary judgement the defense must be specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgement, if appropriate, shall be entered against him.

The appellees have failed to give any response whatsœver to the motion for summary judgement.

The "Opinion and Order #43384 " denies the appellant the protection of rule 17 of the F.R.C.P.

The dismissal for lack of standing is contrary to rule 17 of the F.R.C.P. in that "..." No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest;..."

The fraudulant documents introduced into the proceedings by the appellees is cause for judgement to be rendered against them. According to Boyce vs Grundy, 3 Pet 210, " Fraud vitiates everything. " 7 L Ed. 655. Also in Nudd vs Burrows, 91 US 426, " Fraud destroys the validity of everything into which it enters. " 23 L Ed. 286. To further show that fraud destroys the validity of judgements as well in United States vs Throckmorton, 98 US 61, the court ruled " Fraud vitiates the most solemn contracts, documents and even judgements. " 25 L Ed. 93. Further on in Boyce vs Grundy the court says, " The law abhors fraud and does not incline to permit it to purchase indulgence, dispensation or absolution. " The " Opinion and Order # 43384 " is contrary to all of these court rulings as well as the rules cited before them.

The appellant invokes Mangrelli vs Italian Line, 144 NYS 2d. 570, 280 Misc. 685, " Husband's cause of action for loss of wife's services and expenses resulting from personal injury, is separate and distinct from wife's cause of action for personal injuries. He must establish that the defendant was negligent and that his wife was not contributory to the negligence in order to succeed in his action. " To deny the appellant the relief and protection setforth in Domestic Relations 307 and Mangrelli vs Italian Line infringes on his rights and privileges garanteed by the Fourteenth Amendment.

The Courts in granting judgements in this instant case has strayed away from Commonwealth Coatings Corp. vs Continental Casualty Co. 393 US 145, 89 S. Ct. 337, " Any tribunal permitted by law to try cases and controversies must not only be unbiased but must avoid even the appearance of bias. " 21 L Ed. 2d. 301.

The courts should have applied Moore vs Crawford, 130 US 122, 9 S. Ct. 447, " Fraud in the sense of a court of equity includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed and injurious to or by which an undue or unconscientious advantage is taken

of another." 32 L Ed. 878

Since the appellees have failed to account for the acts or actions committed in the litigation of the case of 71 Civ 2734 Alice M. Calhoun vs Riverside Research Institute et al, this constitutes omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed and injurious to or by which an undue or unconscientious advantage is taken of another. This fraud is conspiratorial and criminal under 18 USC 241 because it interferes with a citizen's right or enjoyment of rights and privileges secured by the Constitution or laws of the United States.

JURISDICTION ON APPEAL

The appellant appeals pursuant to 28 USC 1254 (1) that provide jurisdiction in the Supreme Court of the United States from the final judgement of a United States Court of Appeal by writ of certiorari granted upon petition of any party to a civil case, after rendition of judgement.

The judgement rendered by the United States Court of Appeal failed to answer the " Questions Presented " by the appellant.

"1. Is a motion to dismiss a complaint fraudulant if it contains fraudulant evidence and is based on that fraudulant evidence ?"

"2. Can a judgement that is based on a motion containing fraudulant evidence as its basis moot a motion for summary judgement and grant a motion to dismiss a complaint ?"

"3. Does the plaintiff have the right to cross examine the opposition in order that he may prove to the court that evidence offered in defense of a complaint is fraudulant ?"

"4. When the court denies the plaintiff the opportunity to cross examine the opposition , is this a denial of due process of law and a violation of the constitutional rights of the plaintiff ?"

Since these questions are essential to the proper adjudication of this complaint, it is imperative

that the court give answers to such important issues. Since the Court of Appeal has failed to answer these vital questions then it becomes necessary and proper to seek this courts action on these questions.

The plaintiff invokes, United States vs Johnson, 390 US 563, 88 S. Ct. 1231," The exclusive remedy provision of section 207(b) of the Civil Rights Act of 1964 (42 USC 2000a-6b) does not preempt every other mode of protecting a federal " right " or grant immunity from criminal prosecution to those persons who had long been subject to the criminal conspiracy provisions of the civil rights statute in 18 US 241."

" The civil rights statute in 18 US 241 which penalizes a conspiracy to interfere with a citizen's right or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, encompasses all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States. (dissenting opinion) United States vs Johnson, 390 US 563, 88 S. Ct. 1231

In further support of United States vs Johnson, the appellant invokes United States vs Price, 383 US 787, 86 S. Ct. 1152," Both 18 US 241, which makes a conspiracy to interfere with a citizen's free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States a federal offense, and 18 US 242 which makes it a federal offense wilfully to deprive any person, under color of law, of the same rights, include, persumably, all of the Constitution and laws of the United States.

The court has ruled in United States vs Guest, 383 US 745, 86 S. Ct. 1170, " The federal civil rights statute (18 US 241) which penalizes for conspiring to oppress or imtimidate a citizen in the free exercise or enjoyment of any right or privilege secured to him by the Federal Constitution encompasses rights secured by the equal protection clause as well as by the due process clause of the Fourteenth Amendment.

The fraud is in evidence in the court and the nature and presence of the fraud has been brought to

the attention of the court for its scrutiny and judgement. According to previous court rulings, fraud is abhorred in a court of equity is not permitted to purchase indulgence, dispensation or absolution.

CONCLUSION

The appellees have committed intrinsic fraud by introducing fraudulant conduct as setforth in Moore vs Crawford as well as the explicit fraud they committed by introducing fraudulant documents into this action.

The acts of the appellees have been concealed;the omissions of these acts of legal duty and trust along with the concealment of the facts of the litigation is a fraud in this instant case.

Since this fraud is being carried out by the appellees in concert in order to deny a citizen the rights granted to him by the Constitution of the United States, it is a conspiracy under 18 US 241 and a federal offense under 18 US 242 to wilfully deprive a person of his rights.

This appeal should be acted upon by this court in such a way as to grant relief and judgement to the appellant.

The appellant complains of the acts of the persons in the lower courts that tampered with the records in a way that favors the appellees. The decision to deny my motions are clerical decisions and the motions requesting that the appellees make admissions pursuant to rule 36 of the F. R. C. P. is missing from these proceedings. The clerical personnel did not enter it on the docket sheet in order that it will not be a part of the proceedings. These acts are criminal according to 18 US 241 and 242 in that they are wilful acts that deny a citizen the rights secured by the Constitution and laws of the United States.

Since the appellees have committed acts of fraud and deceit, conspiracy and collusion, conspiracy to defraud a client, misrepresentation and unauthorized representation, malpractice and wilful misconduct, without either a denial or a defense can there be any reasonable and fair judgement other than for the appellant? The appellant pleads for justice in a reasonable and impartial manner. Respectfully submitted,

Robert Calhoun Jr.
111-11 132nd Street
Jamaica, New York 11420

CONTENTS OF APPENDIX A

UNITED STATES COURT OF APPEAL

Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighth day of November one thousand nine hundred and seventy-six.

Present: Honorable Leonard P. Moore

Honorable Wilfred Feinberg

Honorable Thomas J. Meskill

Circuit Judges

ROBERT CALHOUN JR.,

Plaintiff-Appellant

-against-

H. SPENCER KUPPERMAN, ESQ., et al.,

Defendants-Appellees

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued

by appellant pro se and by counsel for the appellees.

On Consideration Whereof, it is now hereby ordered, adjudged and decreed that the judgement of said District Court be and it hereby is affirmed on the opinion of Judge Duffy, dated November 1, 1975.

Leonard P. Moore

Judgement Entered
12-3-76

Wilfred Feinberg

Raymond Burghardt
Clerk

Thomas J. Meeskill
U. S. C. JJ.

A true copy

A. Daniel Irisare, Clerk

UNITED STATES COURT OF APPEAL

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-fifth day of March, one thousand nine hundred and seventy-six.

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Robert Calhoun, Jr.,

Appellant,

v.

Hon. Kevin T. Duffy,

Appellee.

----------x

A motion having been made herein by Appellant pro se for a writ of mandamus

Upon consideration thereof, it is

Ordered that said motion be and hereby is denied.

JLO WHT JEL

James L. Oaks

Wm. H. Timmons

UNITED STATES COURT OF APPEAL
FOR THE SECOND CIRCUIT

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Robert Calhoun Jr., Plaintiff-Appellant,

-against- No. 75-7682

H. Spencer Kupperman, et al,

Defendants-Appellees. Notice of

----------x Appeal

NOTICE IS HEREBY GIVEN THAT, Robert Calhoun Jr., plaintiff-appellant named above, hereby appeals to the Supreme Court of the United States pursuant to 28 USC 1254 (2) from the final judgement of the United States Court of Appeal for the Second Circuit affirming the " Opinion and Order " of the District Court Judge Kevin T. Duffy, entered on December 3, 1976.

Date: December 13, 1976

Robert Calhoun Jr.
111-11 132 Street
Jamaica, New York 1142

Copies to:
H. Spencer Kupperman Esq.
Skadden, Arps, Slate, Meagher, & Flom
Freeman, Meade, Wasserman & Sharfman
Cravath, Swaine & Moore
Thacher, Proffitt, Prizer, Crawley & Wood

CONTENTS OF APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT CALHOUN JR., Plaintiff,
-against-
H. SPENCER KUPPERMAN, ESQ, et al
Defendants.

OPINION AND ORDER #43384

APPEARANCES

ROBERT CALHOUN JR.,
Pro se, Plaintiff
H. Spencer Kupperman,
Pro se, Defendant
CRAVATH, SWAINE & MOORE
Pro se, Defendants
Thacher, Proffitt, Prizer, Crawley & Wood
Pro se, Defendants
SKADDEN, ARPS, SLATE, MEAGHER & FLOM
Pro se, Defendants and for Defendants Michael H. Diamond, Henry P. Baer, J. Phillip Adams, Peggy L. Kerr
FREEMAN, MEADE, WASSERMAN & SHARFMAN
Pro se, Defendants

KEVIN THOMAS DUFFY, D.J.

This is an action brought under 42 U.S.C. 1983, 18 U.S.C. 241 & 242, the Civil Rights Act of 1964 and the Fourteenth Amendment. Robert Calhoun Jr. the sole plaintiff in this action is the husband of Alice M. Calhoun. Mrs. Calhoun had previously brought an action against Riverside Research Institute (" Riverside ") and Columbia University(" Columbia ") allegeing discrimina-

tion based on race in the defendants' failure to promote her to the post of assistant manager of the "AMRAD Data Reduction Group " at its Electronics Research Laboratories. Calhoun v. Riverside Research Institute, 71 Civ 2734 (S. D. N. Y.). Defendants in the action before me are the attorneys and law firms who represented Mrs Calhoun, Riverside and Columbia at various stages of that litigation.

At some point in the earlier suit, Columbia was discontinued as a defendant. The claim against Riverside resulted in a disputed settlement agreement of $3000. 00 to cover Mrs. Calhoun's out of pocket litigation expenses Attorneys' fees were not included in this figure since counsel for Mrs. Calhoun had undertaken the case on a pro bono basis.

The disputed settlement was successfully challenged by Mrs. Calhoun at a hearing before Judge Knapp. The Judge expressed a willingness to act as a catalyst to bring the parties together on a new agreement:

MRS. CALHOUN: Your Honor Mr. Calhoun is criticizing me for negotiating a settlement.

THE COURT: Mr. Calhoun is not attacking anybody. Mr. Calhoun is expressing his wishes. My point is, Mr.

Calhoun, we are all here, we are all present, and why don"t we try to settle it right now?

MR. CALHOUN: Right.

THE COURT: So let us not worry about who did what in the past.

Following a discussion off the record, a settlement figure of $5,900 was agreed upon . The agreement was placed on the record:

THE COURT: I take it you represent that this settlement takes into account any claims you have against Riverside Research Institute?

MRS: CALHOUN: Yes, I am under the impression that once you have settled, there is no recourse.

THE COURT: You represent to me that you have no claims of any sort against Riverside Research or anybody there?

MRS CALHOUN: Yes.

THE COURT: That is not taken care of by this settlement?

MRS. CALHOUN: I do.

Mr. Calhoun now alleges that the defendants conspired in the litigation to do harm to him and his wife by causing his wife to lose the damages that were warranted in her action. It is the general rule that an individual cannot sue for the deprivation of another's civil rights. McGowan v. Maryland, 366 US 420,429 (1961); Evain v. Conlisk, 364 F. Supp. 1188 (N. D. Ill.),aff'd,498 F. 2d 1403 (7th Cir. 1974). Only Mrs. Calhoun is in a position to raise any wrongs done to her. The statement that Mr. Calhoun was in turn harmed does not cure this defect.

Since plaintiff lacks standing , the complaint fails to state a claim upon which relief can be granted. The action, therefore , must be dismissed as to all defendants. Plaintiff's motion for summary judgement and other relief are thus mooted.

SO ORDERED.

Kevin Thomas Duffy

Dated: New York, New York
November 11 , 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT CALHOUN JR., Plaintiff,
-against-
H. SPENCER KUPPERMAN, ESQ.,
Defendants.

Docket No.
75 Civ 3748
Notice of a
Motion for a
Summary
Judgement

----------x

Please take notice that the plaintiff motions for a summary judgement against the defendants for introducing fraudulant evidence into this action. Since neither procution nor defense can be maintained on fraudulant evidence, it is necessary that the Court give judgement now.

In a pre-trial conference before Honorable Judge Kevin T. Duffy, on September 17, 1975 at about 3:00 P. M., the plaintiff informed the Court that the transcript that was submitted in the " Memorandum of Law on Behalf of Defendant Skadden, Arps, Slate, Meagher & Flom in Support of Motion to dismiss the Complaint" was defective and does not represent what it is purported to represent. The plaintiff also called the Courts attention to the defect in the date on the " Stipulation of Discontinuance " that was entered at the conference. The plaintiff informed the Court that he had evidence to show that the signature date was in error. (see letter attach-

ed).

The plaintiff begs the Court to grant the relief prayed for in his complaint and ask the court to join all of the defendants in this judgement that joined Skadden, Arps, Slate, Meagher & Flom in this motion. (H. SPENCER KUPPERMAN, FREEMAN, MEADE, WASSERMAN & SHARFMAN, : CRAVATH, SWAINE & MOORE;)

(Letter Attached)

Freeman, Meade, Wasserman & Sharfman
Attorneys and Counsellors at Law
551 Fifth Avenue
New York New York 10017
Telephone: 212-697-6464

July 2, 1974

Michael H. Diamond Esq.
Skadden, Arps, Slate Meagher & Flom
919 Third Avenue
New York, New York 10022

Alice M. Calhoun v. Riverside Research Institute and Columbia University

Dear Mr. Diamond:

I have received your letter of June 26, 1974. Enclosed are my firm's check for $5,900 payable to Alice M. Calhoun for her out-of-pocket expenses, not including any attorney's fees, and the stipulation discontinuing the above-entitled action with prejudice and without costs which was signed

by Judge Knapp and filed yesterday.

Very truly yours,

Richard M. Sharfman

Encs.
RMS:rs

Docket Sheet for 71 Civ 2734 Alice M. Calhoun vs Riverside Research Institute et al. is in the records and the Appendix that will follow this appeal.

NOTICE OF APPEAL TO A COURT
OF APPEAL FROM A JUDGEMENT
OR ORDER OF A DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT CALHOUN JR., Plaintiff, -against- H. SPENCER KUPPERMAN ESQ. et al., Defendants.

Docket No. 75 Civ 3748

Notice of Appeal

Notice is hereby given that, Robert Calhoun Jr., plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order to dismiss the complaint and to moot the motion for a summary judgement, entered on November 11, 1975.

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1315

ROBERT CALHOUN JR., Plaintiff-Appellant,

-against-

H. SPENCER KUPPERMAN et al.,
Defendants-Appellees

MOTION TO DISMISS

Robert Calhoun Jr.
111-11 132nd Street
Jamaica, New York 11420

Attorney for Appellant

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76 - 1315

ROBERT CALHOUN JR., Plaintiff-Appellant,

-against-

H. SPENCER KUPPERMAN et al.,
Defendants-Appellees

On Appeal from the United States Court of Appeal
for the Second Circuit

MOTION TO DISMISS

Pursuant to Rule 16(1) of the Rules of the Supreme Court of the United States, appellant Robert Calhoun Jr. moves to dismiss the motion putforth by Cravath, Swaine & Moore for failing to file the motion within the time allowed by this Rule. (thirty days)

The appellant further moves to have all of the appellees held in default for failing to file briefs or motions within the

time allowed by the rules of this Court.

Alternatively, the appellant moves to have a ruling on the validity of the transcript entered by the appellees based on the following facts:

1. The court records do not show that notice was given for a conference on June 26, 1974, nor does the court record indicate that such a conference was held.

2. The transcript indicates that Michael Diamond is representing the plaintiff. But the letter written by Mr. Diamond to Mr. Sharfman indicate that Michael Diamond was not present at such a conference.

3. The transcript does not setforth in its opening statement that Mr. Sharfman is present at the conference yet there are statements and references that indicate he is present.

4. The stipulation of settlement referred to in the second paragraph is missing and unaccounted for nor has the appellant been able to prevail upon the courts or the appellees to produce this document.

" Does the Court issue Exhibits in settlements ?"

5. Line 22 page 3 of the transcript indicates that the statements made by the Court were read. Can this be a direct cross-examination as this is purported to be?

The appellant moves to have the transcript ruled to be fraudulant and lacking in fact or purpose to support a defense against the complaint.

Appended hereto are copies of the following documents:

1. Docket Sheet of 71 Civ 2734
2. Transcript entered by Appellees
3. Stipulation of Discontinuance
4. Letter written by Richard Sharfman
5. Letter written by Michael Diamond

6. The Stipulation of Discontinuance is fraudulant in that it is dated June 26, 1974 but was not entered into the court until July 1, 1974. (see letter written by Sharfman)

Robert Calhoun Jr.
111-11 132nd St.
Ozone Park 20, N. Y.
Jamaica 9-1374

IN THE

Supreme Court of the United States

October Term, 1976
No. 76-1315

ROBERT CALHOUN JR., Plaintiff-Appellant,

-against-

H. SPENCER KUPPERMAN et al.,
Defendants-Appellees

APPENDIX TO MOTION TO DISMISS

Robert Calhoun Jr.
111-11 132nd Street
Jamaica, New York 11420
Attorney Pro se

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* Note that the letter head has been removed

CIVIL DOCKET
TED STATES DISTRICT COURT

JUDGE KNAPP ~~JUDGE TYLER~~

Jury demand date:

71 CIV. 2734

TITLE OF CASE

ICE M. CALHOUN

VS.

RSIDE RESEARCH INSTITUTE AND COLUMBIA UNIVERSITY

ATTORNEYS

For plaintiff:
H. SPENCER KUPPERMAN
228 Bergen St.
Brooklyn, N.Y. 11217

For defendant:
Thacher, Proffitt, Wrizer, Crawley & Wood
(for Trustees of Columbia University)
40 Wall St. NY 10005 269-5100
~~CRAVATH, SWAINE & MOORE~~
~~One Chase Manhattan Plaza~~
~~NYC 10005~~
MEADE, WASSERMAN & PLOWDEN-WARDLAW
1 Chase Manhattan Plaza, N.Y.
(Sub on 4-18-72)

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J mailed X	Clerk								
6 mailed	Marshal								
of Action: CIVIL RIGHTS. ACT. 1964	Docket fee								
	Witness fees								
en arose at:	Depositions								

ALICE M. CALHOUN vs. RIVERSIDE RESEARCH INSTITUTE AND COLUMBIA UNIVERSITY.

71 CIV. 2734

JUDGE KNAPP

JUDGE PAGE

DATE	PROCEEDINGS	Judgment Not
Jun21-71	Filed Complaint. Issued Summons.	
Jun21-71	Filed Notice of Assignment J. Tyler	
ul.15-71	Filed stip and order that the time for deft. Riverside Research Institute, to answer complaint is ext. from 7-12-71 to 8-9-71. So Ordered. Tyler,J.	
ul 20-71	Filed stipulation and order extending The Trustees of Columbia University in the City of New York's time to answer complaint to 8/9/71. So ordered. Tyler,J.	
ug.18-71	Filed Summons with Marshal's ret. Served: Columbia University, by Dr. McGill on 6-24-71 Served: Riverside Research Institute by Walter Harris on 6-24-71	
ept.7-71	Filed stipulation and order extending defendants' time to answer complaint to 9/10/71. So ordered. Pollack,J.	
ep.7-71	Filed ANSWER of Trustees of Columbia University to complaint.	TPPC&W
ep.23-71	Filed stip and order that pltff's time to move pur. to rule 11(a) for a determination of a class is extended to 10-18-71 Tyler J.	
ep.23-71	Filed stip and order that deft Riverside Research Institute's time to Answer the complaint is extended to 10-1-71 Tyler J.	
ct.4-71	Filed deft. Riverside ANSWER to complaint	CW&M
ct.20-71	Filed stip and order that the time for pltff. to move for a determination of a class action is ext. to 11-18-71, Tyler,J.	
ov.1-71	Filed stip and order that the deft. Riverside Research Institute's time to amend its answer to the complaint is ext to 11-18-71. Tyler,J.	
ov.18-71	Filed stip and order tha pltff's time to move for a determination of a class is ext. to 1-3-72, etc. Tyler,J.	
Jan 5/72	Filed Stip. and Order extending time to answer to 2/14/72. So Ordered Tyler J.	
Feb 15/72	Filed Stip & Order extending time to answer to 4/3/72/ So Ordered Tyler J.	
Mar.13-72	Filed stipulation and order discontinuing action as against deft. Columbia University only. So ordered. Tyler, J.	
pr.18-72	Filed consent & order to substitution of attorneys for deft's, Riverside Research Institute. So ordered. Tyler,J.	
May 18-72	Filed Affidavit of Walter Harris in opposition to motion of pltf.	
May 18-72	Filed Reply Memorandum of Law.	
May 18-72	Filed Memorandum in support of pltf's motion for declaration of a class action.	
May 18-72	Filed Affidavit of Alice M. Calhoun.	
May 18-72	Filed Notice of Motion Re: Class action determination. Ret. 6/14/72 in ROOM 2704.	
May 18-72	Filed Memorandum of deft. Riverside Research Institute in opposition to pltf's. motion for class action determination.	
May 18-72	Filed MEMORANDUM OPINION #38500. Tyler, J. The motion re: Maintain as a class action, is denied upon determination that certain conditions precedent and other requirements of Rule 23 cannot be met in this case. It is so ordered. (mailed notice).	
Jun.8-72	Filed pltff's Notice of motion to reargue be denied, pltff. be allowed to appeal, etc.	
Jun.8-72	Filed pltff's Memorandum	
Jun.8-72	Filed Affdvt. of Service by Mail by I.H. Spencer Kupperman, to deft. on 5-27-72.	
Jun.8-72	Filed deft's Memorandum in opposition to pltff's motion for reargument	
Jun.8-72	Filed Memo Endorsed on motion filed this day. The Motion for re-argument is denied, etc. So Ordered. Tyler,J.	
ep 25-72	Filed pltff's notice of motion re:Withdrawal of counsel ret 9-22-72.	
ct 4-72	Filed Order that the motion of H. Spencer Kupperman, for leave to withdraw his appearance as atty of record for pltff is granted. (mailed notice) TYLER,J.	

-cont'd on next page-

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judgment
Jan12-73	Filed deft Riverside Research Institute's notice to take deposition of pltff Alice M. Calhoun on 2-23-73.	
Jul 20-73	Filed Stip and Order that all of deft Riverside Research Institute's privileges, rights etc. to suppress or otherwise move, in respect of any and all material obtained from the files or records of local state of federal governmental agencies are reserved to the trial of this action, it being expressly agreed and ordered that this reservation and Riverside Research Institute's deferral until trial of assertion of its privileges, rights etc., the subject matter hereof shall in no way prejudice such privileges, rights or remedies. KNAPP	
Apr5-73	Filed order denying petitioner's motion for an order vacating the denial of petitioner's supplemental petion for writ of habeas corpus Knapp,J. mn by Pro Se.	
Nov.26-73	Pre-trial conference held before Magistrate Goettel.	
Feb.28-74	Filed pltff's notice to take deposition of B.A. Collier.	
Mar.28-74	Filed notice of Pre-trial conference before Magistrate Goettel.	
May. 1-74	PRE-TRIAL CONFERENCE HELD BEFORE MAGISTRATE GOETTEL.	
May.14-74	Filed consent & pre trial order. So ordered. Knapp,J.	
Jun.27-74	Filed Order that action is discontinued without costs. Knapp,	
Jul.2-74	Filed stip & order that action is discontinued with or prejudice without costs. So ordered. Knapp,J.	
7/12/74	Filed transcript of record of proceedings, dated 6/26/74	
8/9/24		
Mar.5-75	Filed pltff's request assignment of legal representative.	
Jul.15-75	Filed pltff's notice of appeal to the USCA from final judgment entered June 27-1074. Mailed copies to Freedman, Meade, Wasserman & Sharfman & Riverside Research Institute Inc.	

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ALICE MAE CALHOUN,

Plaintiff,

-against-

RIVERSIDE RESEARCH INSTITUTE,

Defendant.

71 Civ. 2734

B e f o r e :

HONORABLE WHITMAN KNAPP,

District Judge.

United States Court House,
New York, N.Y.
June 26, 1974

A p p e a r a n c e s :

Henry P. Baer, Esq.,
Attorney for Plaintiff,
Michael Diamond, Esq., of Counsel.

Friedman, Meade, Wasserman & Sharfman,
Attorneys for Defendant,

Richard M. Sharfman, Esq., of Counsel.

THE COURT: Let the record note that in addition to both counsel and the plaintiff, also present are my law clerk, Miss Abigail Pessen, and Mr. Robert Calhoun.

Gentlemen, Mrs. Calhoun, I have here a stipulation of settlement which I hage accepted and will mark as Court Exhibit No. 1.

(Court Exhibit 1 marked.)

THECOURT: I understand that Mr. Diamond, acting through Mr. Baer, has represented to the defendants that he estimates the plaintiff's out-of-pocket expenses during this protracted litigation at about $5,900. Plaintiff's attorney, Mr. Diamond, through himself acting through Mr. Baer, will address a letter to the defendant reading as follows:

"Having completed discovery and having reviewed the relevant law, we have recommended to our client, Alice M. Calhoun, that she withdraw her complaint and dismiss the action with prejudice. She has accepted our recommendation, and accordingly accepts Riverside Research Institute's offer of reimbursement of her out-of-pocket expenses not including any attorneys' fees."

Mr. Sharfman, it is my understanding, and I would like it confirmed on the record, that Mrs. Calhoun resigned from her position at Riverside Research Institute, which

mb

was what date?

MRS. CALHOUN: November 30, 1973.

THE COURT: November 30, 1973. She resigned as a satisfactory employee.

MR. SHARFMAN: Let me go off the record for a minute.

(Discussion off the record.)

THE COURT: I take it you represent that this settlement takes into account any claims you have against Riverside Research Institute?

MRS. CALHOUN: Yes, I am under the impression that once you have settled, there is no recourse.

THE COURT: You represent to me that you have no claims of any sort against Riverside Research or anybody there?

MRS. CALHOUN: Yes.

THE COURT: That is not taken care of by this settlement?

MRS. CALHOUN: I do.

(Discussion off the record.)

(The foregoing statements by the Court were read.)

MR. SHARFMAN: It is my understanding, your Honor, that she was an employee in good standing at the time of her resignation.

THE COURT: Good standing, all right.

-0000-

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ALICE M. CALHOUN,

Plaintiff,

-against-

RIVERSIDE RESEARCH INSTITUTE and COLUMBIA UNIVERSITY,

Defendants.

STIPULATION OF DISCONTINUANCE

71 Civ. 2734 W.K.

IT IS HEREBY STIPULATED by and between the undersigned that the above entitled action be and it hereby is discontinued with prejudice and without costs to either party.

June 26, 1974

MILDRED H. DICKEMAN, ESQ.
By Henry P. Rose
Attorney for Plaintiff

Attorneys for Defendant Riverside Research Institute

SO ORDERED:

U.S.D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED JUL 2 1974 S.D. OF N.Y.

ALICE M. CALHOUN,

Plaintiff,

-against-

RIVERSIDE RESEARCH INSTITUTE and COLUMBIA UNIVERSITY,

Defendants.

STIPULATION OF DISCONTINUANCE

71 Civ. 2734 W.K.

IT IS HEREBY STIPULATED by and between the undersigned that the above entitled action be and it hereby is discontinued with prejudice and without costs to either party.

June 26, 1974

Attorney for Plaintiff

Attorneys for Defendant Riverside Research Institute

SO ORDERED:

U.S.D.J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED JUN 27 1974 S.D. OF N.Y.

Alice Mae Calhoun

Plaintiff

against

Riverside Research Institute Defendant

Civil Action File No. 71 Civ 2734

Calendar No.

This cause having duly come on to be heard before me and the attorneys for all parties having appeared and advised the Court that all claims asserted herein have been settled, it is

ORDERED that the above entitled action be and hereby is discontinued without costs to either party.

Dated June 26, 1974

MICROFILM JUN 27 1974

United States District Judge

I hereby consent to the entry of this proposed order:

Attorney for Plaintiff

Attorney for Defendant

Note: Consent should be signed by the responsible Attorney for each side and not a firm name only.

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FREEMAN, MEADE, WASSERMAN & SHARFMAN
ATTORNEYS AND COUNSELLORS AT LAW

JAMES M. BRACHMAN
MELVYN FREEMAN
RICHARD C. MEADE
LOUIS SCHNEIDER
RICHARD M. SHARFMAN
JACK GUMPERT WASSERMAN
COUNSEL
JOHN P. MEADE *
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EUROPEAN OFFICE
MEADE, WASSERMAN & FREEMAN
83, BOULEVARD DE COURCELLES
PARIS 8e FRANCE
TELEPHONE 267-53-97

July 2, 1974

Michael H. Diamond, Esq.
Skadden, Arps, Slate, Meagher & Flom
919 Third Avenue
New York, N.Y. 10022

Alice M. Calhoun v. Riverside Research Institute and Columbia University

Dear Mr. Diamond:

I have received your letter of June 26, 1974. Enclosed are my firm's check for $5,900 payable to Alice M. Calhoun for her out-of-pocket expenses, not including any attorneys' fees, and the stipulation discontinuing the above-entitled action with prejudice and without costs which was signed by Judge Knapp and filed yesterday.

Very truly yours,

Richard M. Sharfman

Encs.
RMS:rs

July 2, 1974

Richard Sharfman, Esq.
Freeman, Meade, Wasserman
& Sharfman
551 Fifth Avenue
New York, New York

Re: Calhoun v. Riverside

Dear Dick:

Although I was sorry to be missing for the final gun, I am sure you can appreciate my feelings now that this action has been terminated. I would like to thank you for your courtesy throughout the litigation.

One open matter is my expenses for the deposition in Washington on June 20th, 1974. Air fare both ways amounted to $59.28 and taxi cabs to and from the airport were $8.00. Would you please send me a check for $67.28 at your earliest convenience.

I can't say it was always a pleasure to oppose you in this case, but it was never uninteresting.

Thanks again.

Very truly yours,

Michael H. Diamond

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1315

ROBERT CALHOUN, JR.,
Appellant,

—against—

H. SPENCER KUPPERMAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION TO DISMISS APPEAL

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
919 Third Avenue
New York, New York 10022
(212) 371-6000
Appellee Pro Se

Of Counsel:

WILLIAM P. FRANK
VAUGHN C. WILLIAMS
ROBERT E. ZIMET

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TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1315

ROBERT CALHOUN, JR.,
Appellant,

—against—

H. SPENCER KUPPERMAN, *et al.*,
Appellees.

MOTION TO DISMISS APPEAL

Appellee Skadden, Arps, Slate, Meagher & Flom ("Skadden, Arps") moves the Court, pursuant to Rule 16(1)(a) of the *Revised Rules of the Supreme Court,* to dismiss the appeal in the above-captioned action on the ground that that appeal is not within the Court's appellate jurisdiction. Recognizing that the Court may regard the Appellant's improvidently taken appeal as a petition for writ of certiorari, pursuant to 28 U.S.C. § 2103, the Appellee Skadden, Arps also submits that the above-captioned action presents no substantial federal question meriting the exercise of the Court's certiorari jurisdiction.

OPINIONS BELOW

The unreported opinion of the United States Court of Appeals for the Second Circuit, issued on December 3, 1976, is presented in Appendix A of the Appellant's Jurisdictional Statement.

The unreported opinion of the United States District Court for the Southern District of New York, issued on November 11, 1975 in Docket No. 75 Civ. 3748, is presented in Appendix B of the Appellant's Jurisdictional Statement.

JURISDICTION

On February 3, 1977, the Appellant filed with the Court a Jurisdictional Statement noting an appeal from the decision of the Court of Appeals for the Second Circuit. That Jurisdictional Statement was placed on the Court's appellate docket as No. 76-1315.

The Jurisdictional Statement, however, does not base this Court's jurisdiction upon any provision establishing an appellate jurisdiction, but rather relies upon Section 1254(1) of Title 28 of the *United States Code*, a provision establishing this Court's certiorari jurisdiction over cases in the Courts of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are set forth in the Appellant's Jurisdictional Statement.

QUESTIONS PRESENTED

Whether the Court of Appeals properly affirmed the District Court's dismissal of Appellant's complaint, pursuant to Rules 12(b)(1) and 12(b)(6) of the *Federal Rules of Civil Procedure*, on the grounds that:

(a) the Appellant lacked standing to sue on behalf of an alleged injury to the civil rights of his former wife; and

(b) the Appellant's complaint did not allege any cause of action arising under federal law.

STATEMENT OF THE CASE

The Appellant appeals from an order of the United States Court of Appeals for the Second Circuit, affirming the District Court's dismissal of the Appellant's complaint for lack of standing and failure to state a cause of action.

The Parties

The Appellant, Mr. Robert Calhoun, Jr., is the former husband of Alice M. Calhoun.* Mrs. Calhoun was the plaintiff in a civil rights action in the District Court for the Southern District of New York, entitled *Alice M. Calhoun* v. *Riverside Research Institute* (S.D.N.Y. 71 Civ. 2734)** to which the Appellant was *not* a party. In the *Alice M. Calhoun* action Mrs. Calhoun had alleged that the defendants therein had discriminated on the basis of her race in their employment of her, in violation of Title VII of the Civil Rights Act of 1964. That action was dismissed, upon a $5,900 payment to Mrs. Calhoun in settlement of her claim. That settlement was fully supervised by and reviewed in open hearing by a judge of the District Court for the Southern District, before the order of dismissal was issued.

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* A judgment of divorce was issued by the New York Supreme Court, Queens County, on September 9, 1975 in *Alice M. Calhoun* v. *Robert Calhoun* (Index No. 9866/75).

** The Appellant sought to prosecute an appeal from an order of the United States District Court in the *Alice M. Calhoun* case. The Second Circuit dismissed Mr. Calhoun's appeal for lack of jurisdiction (Case No. 75-7415) and this Court denied Mr. Calhoun's petition for a writ of certiorari on March 8, 1976 (Case No. 75-1022).

The Appellees are, except for Skadden, Arps, Slate, Meagher & Flom ("Skadden, Arps"), the attorneys who represented Mrs. Calhoun and the several defendants in the *Alice M. Calhoun* action. Skadden, Arps is apparently included in this action because several individual associate attorneys of Skadden, Arps (named in the caption but not served with the complaint) had, in their individual capacities, represented Mrs. Calhoun in that action on a *pro bono* basis, in substitution for her earlier counsel.

The Complaint

The complaint, filed in the District Court for the Southern District of New York on July 31, 1975, purported to base the Appellant's claims on the Civil Rights Act of 1964, on 42 U.S.C. § 1983, on 18 U.S.C. §§ 241-42, and on this Court's decision in *Greenwood* v. *Peacock*, 384 U.S. 808 (1966).

The factual basis of the vaguely drafted complaint was set forth in the following allegations:

> "The plaintiff claims that the defendants did conspire together in the litigation of a Civil Rights action (71 Civ. 2734 Alice M. Calhoun vs Riverside Research Institute and Columbia University) to do harm to him and his wife. The defendants are charged with carrying out a conspiracy that caused his wife to lose the damages that were warranted in her action." Complaint, ¶ II.

In reviewing the complaint, the District Court took judicial notice of the earlier settlement proceedings before the United States District Court in the *Alice M. Calhoun* action.* *Despite* the eminent fairness of that judicially supervised settlement, the Appellant Mr. Calhoun (*not* Mrs. Calhoun) sought by the com-

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* Relevant portions of the transcript of the District Court's approval of the settlement in the *Alice M. Calhoun* action are quoted in the District Court's subsequent opinion in the present action. (See App. A. to Jurisdictional Statement.)

plaint in the current action to accuse all the counsel involved of a conspiracy to deprive Mrs. Calhoun of "the damages that were warranted in her action."

Proceedings Below

After oral argument in chambers on September 17, 1975, the District Court on November 11, 1975 granted the Appellees' motions to dismiss the complaint for lack of standing and for failure to state a cause of action. The District Court also denied the Appellant's summary judgment motion as moot. These rulings were affirmed by the Court of Appeals for the Second Circuit on December 3, 1976 in an opinion that adopted the opinion of the District Court.

ARGUMENT

I. The Jurisdictional Statement Should Be Dismissed Because It Does Not Present a Matter Within the Court's Appellate Jurisdiction.

The Court of Appeal's affirmance of the dismissal of Appellant's complaint involved no ruling to invalidate a state statute or other state authority. Thus, the Appellant is not, as required by 28 U.S.C. § 1254(2) for the invocation of the Court's appellate jurisdiction over the Courts of Appeals,

> a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States. . . .

Since the Court's appellate jurisdiction does not extend to this action, the appeal should be dismissed.

II. The Jurisdictional Statement, if Treated as a Petition for Writ of Certiorari, Should be Denied.

If the Court decides, pursuant to 28 U.S.C. § 2103, to treat the Jurisdictional Statement as a petition for writ of certiorari,

the Court should then deny the petition.* The Court of Appeal's decision, for which the Appellant seeks this Court's review, is consistent with decisions in other Courts of Appeals and presents no substantial question of federal law.

A. The Court of Appeals Correctly Affirmed the District Court's Ruling that the Appellant Had No Standing to Object to the Legal Representation Afforded Mrs. Calhoun.

The Court of Appeals affirmed the dismissal of Appellant's complaint by adopting the District Court's opinion, which concluded that the Appellant lacked standing to sue for the alleged violations of his former wife's civil rights. The District Court ruled that

> It is the general rule that an individual cannot sue for the deprivation of another's civil rights. [citations omitted] Only Mrs. Calhoun is in a position to raise any wrongs to her. The statement that Mr. Calhoun was in turn harmed does not cure this defect.

Appellees submit that this ruling is consistent with previous decisions by this Court and by other federal courts, and presents no significant federal question meriting the Court's review.

In the *Alice M. Calhoun* action that was the basis for the Appellant's complaint, Skadden, Arps had no attorney-client relationship with the Appellant. *Mrs.* Calhoun was the client of individual associate attorneys at Skadden, Arps. Only Mrs. Calhoun (and *not* the Appellant) was a party in that action, which involved *no* alleged injury to the Appellant's civil rights.

The principle is well established that only the party aggrieved may complain of any infringement to his constitutional

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* In that event, the Appellee Skadden, Arps requests that its Motion to Dismiss Appeal be treated by the Court as an Opposition to the Petition for Writ of Certiorari.

rights. As Chief Justice Warren stated in *McGowan* v. *Maryland*, 366 U.S. 420 (1961):

> "Since the general rule is that 'a litigant may only assert his own constitutional rights or immunities,' *United States* v. *Raines*, 362 U.S. 17, 22, 4 L. Ed. 2d 524, 529, 80 S. Ct. 519, we hold that appellants have no standing to raise this contention." *Tileston* v. *Ullman*, 318 U.S. 44, 46, 87 L. Ed. 603, 604, 63 S. Ct. 493. 366 U.S. at 429 (footnote omitted).

See also Warth v. *Seldin*, 422 U.S. 490 (1975).

The Courts of Appeals have also consistently rejected the notion that one may base his own standing on the claim that the civil rights of another have been violated. For example, in *O'Malley* v. *Brierley*, 477 F.2d 785 (3d Cir. 1973), the court stated that:

> "[A] litigant may only assert his own constitutional rights or immunities," *United States* v. *Raines*, 362 U.S. 17, 22, 80 S. Ct. 519, 523, 4 L. Ed. 2d 524 (1960); *McGowan* v. *Maryland*, 366 U.S. 420, 429, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), and . . . "one cannot sue for the deprivation of another's civil rights." C. Antieau, Federal Civil Rights Acts, Civil Practice, § 31 at 50-51. 477 F.2d at 789 (footnote omitted).

See also Coxson v. *Godwin*, 405 F. Supp. 1099 (W. D. Va. 1975); *Javits* v. *Stevens*, 382 F. Supp. 131 (S.D.N.Y. 1974). Courts have held that plaintiffs lack standing to sue for another person's loss of civil rights even where the plaintiffs have also alleged some resulting emotional or other injury to themselves. *See Evain* v. *Conlisk*, 364 F. Supp. 1188 (N.D. Ill. 1973), *aff'd mem.* 498 F.2d 1403 (7th Cir. 1974); *Curtiss* v. *Peerless Insurance Co.*, 299 F. Supp. 429 (D. Minn. 1969).

B. The Dismissal of Appellant's Complaint was also Correct Because the Complaint Failed to State a Cause of Action.

The Appellant's complaint alleged causes of action under 42 U.S.C. § 1983, 18 U.S.C. §§ 241 and 242, and the Civil Rights Act of 1964.* Those statutory provisions, as they have each been interpreted by this Court and various Courts of Appeals, provide no cause of action for the injuries alleged by the Appellant.

1. The Appellant Had No Cause of Action Under 42 U.S.C. § 1983.

A cause of action under 42 U.S.C. Section 1983 is only available to a plaintiff who establishes that his civil rights were deprived by a defendant acting under "color of any statute, ordinance, regulation, custom, or usage of any State or Territory." *See Adickes* v. *Kress & Co.*, 398 U.S. 144 (1970). Decisions in the Courts of Appeals have consistently held that an attorney's participation even in a state judicial proceeding (rather than a federal judicial proceeding as in the *Alice M. Calhoun* action) does not render him an official acting under color of state law for purposes of Section 1983. *See Fine* v. *City of New York*, 529 F.2d 70 (2d Cir. 1975); *Lefcourt* v. *Legal Aid Society*, 445 F.2d 1150 (2d Cir. 1971); *Dotlich* v. *Kane*, 497 F.2d 390 (8th Cir. 1974); *Hill* v. *McClellan*, 490 F.2d 859 (5th Cir. 1974); *Page* v. *Sharpe*, 487 F.2d 567 (1st Cir. 1973); *Szijarto* v. *Legeman*, 466 F.2d 864 (9th Cir. 1972); *Steward* v. *Meeker*, 459 F.2d 669 (3d Cir. 1972). Thus, it is settled as a matter of law that Section 1983 provides no cause of action on the basis

* The Complaint also alleged a cause of action under this Court's decision in *Greenwood* v. *Peacock*, 384 U.S. 808 (1966). In *Greenwood*, this Court reviewed certain applications of the federal removal statutes, specifically 28 U.S.C. §§ 1443(1) and (2). That opinion, however, provides no basis for jurisdiction or a cause of action. Indeed, in *Greenwood* this Court *reversed* a decision to allow removal to a District Court.

of the Appellant's allegations about the misrepresentation of his former wife by individual attorneys at Skadden, Arps.*

2. The Appellant Had No Cause of Action Under 18 U.S.C. §§ 241 and 242.

The Appellant's complaint also attempted to allege a cause of action on the basis of Sections 241 and 242 of Title 18 of the United States Code. Those sections prohibit (and provide criminal sanctions for) certain specified conduct in violation of any person's civil rights.** It has been uniformly held, however, that these statutes create only criminal liabilities, and provide no private cause of action for civil remedies. *See United States ex rel. Savage* v. *Arnold*, 403 F. Supp. 172 (E.D. Pa. 1975); *Conklin* v. *Barfield*, 334 F. Supp. 475 (W.D. Mo. 1971); *Spotted Eagle* v. *Blackfeet Tribe of the Blackfeet Indian Reservation*, 301 F. Supp. 85 (D. Mont. 1969); *Sinchak* v. *Parente*, 262 F. Supp. 79 (W.D. Pa. 1966); and *Copley* v. *Sweet*, 133 F. Supp. 502 (W.D. Mich. 1955), *aff'd*, 234 F.2d 660 (6th Cir.), *cert. denied*, 352 U.S. 887 (1956).

* While a cause of action against a private person may be permitted under Section 1983 where it has been established that the private person acted in conspiracy with a state official, the Appellant has made no allegation of such conspiracy. The complaint only alleges a conspiracy among the Appellees, who are all attorneys in private practice and not state officials. The complaint alleges that "this scheme was carried out under color of the United States District Court at Foley Square, New York." Even if that allegation was intended to allege a conspiracy with federal officials, that allegation would not establish a cause of action under Section 1983 since that Section does not apply to the federal officials. *See Bivens* v. *Six Unknown Agents of Fed. Bur. of Narc.*, 456 F.2d 1339 (2d Cir. 1972); *Norton* v. *McShane*, 332 F.2d 855 (5th Cir. 1964).

** Section 241 prohibits conspiracies to restrict any person's exercise of rights secured by the Constitution and federal laws. Section 242 prohibits anyone, acting under color of state law, from interfering with another's rights under the Constitution and federal laws.

3. The Appellant Had No Cause of Action Under the Civil Rights Act of 1964.

The Appellant's complaint also alleged a cause of action under the Civil Rights Act of 1964,* although without any citation or reference to any specific provision of that Act. While that Act provides various remedies and sanctions for interference with specific rights arising under the Constitution and federal laws, it provides no private cause of action or other remedy applicable to the facts alleged by the Appellant. Thus the Civil Rights Act claims of Appellant's complaint were appropriately dismissed.**

---

* 42 U.S.C. §§ 1971, 1975a to d, 2000a to h-6.

** The Civil Rights Act of 1964 provides remedies for interferences with the right to vote (Section 1971), discrimination in the provision of public accommodations and facilities (Sections 2000a through 2000b-3), discrimination in public education programs (Sections 2000c through 2000c-9), discrimination by participants in federally assisted programs (Section 2000d through 2000d-6) and discrimination in employment practices (Sections 2000e through 2000e-17).

CONCLUSION

The Appellant's Jurisdictional Statement should be dismissed or, if treated by the Court as a petition for writ of certiorari, should be denied.

Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
Appellee Pro Se
919 Third Avenue
New York, New York 10022
212-371-6000

Of counsel:

WILLIAM P. FRANK
VAUGHN C. WILLIAMS
ROBERT E. ZIMET

Dated: April 19, 1977

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1315

ROBERT CALHOUN, JR.,
Appellant,

—against—

H. SPENCER KUPPERMAN, *et al.*,
Appellees.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

Vaughn C. Williams, being duly sworn, deposes as follows:

1. On the 19th day of April, 1977, I served three copies of the attached Motion to Dismiss on each party to the above-captioned appeal by depositing three true copies

of the same, enclosed in postage prepaid envelopes addressed to

Robert Calhoun, Jr.
111-11 132nd Street
Jamaica, New York 11420

H. Spencer Kupperman, Esq.
228 Bergen Street
Brooklyn, New York 11217

Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, New York 10005

Thacher, Proffitt & Wood
40 Wall Street
New York, New York 10005

Freeman, Meade, Wasserman & Sharfman
551 Fifth Avenue
New York, New York 10019

in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

/s/

VAUGHN C. WILLIAMS

Sworn to before me this
19th day of April, 1977.

/s/

NOTARY PUBLIC

FRED A. MANFREDONIA
Notary Public, State of New York
No. 30-4913012
Qualified in Westchester County
Certificate Filed in New York County
Commission Expires March 30, 1979

In the

Supreme Court of the United States

October Term, 1976

No. 76-1315

ROBERT CALHOUN, JR.,

Appellant,

-against-

H. SPENCER KUPPERMAN, ESQ., CRAVATH, SWAINE & MOORE, its agents and others, THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD, its agents and others, SKADDEN, ARPS, SLATE, MEAGHER & FLOM, its agents, Michael H. Diamond, Henry P. Baer, J. Phillip Adams, Peggy L. Kerr and others, FREEMAN, MEADE, WASSERMAN & SHARFMAN, its agents and others,

Appellees,

On Appeal from the United States Court of Appeals for the Second Circuit

MOTION TO DISMISS OR AFFIRM

JAMES F. GLEASON, JR.,
One Chase Manhattan Plaza,
New York, N. Y. 10005

Attorney for Appellee
Cravath, Swaine & Moore

April 15, 1977.

In the

Supreme Court of the United States

October Term, 1976

No. 76-1315

ROBERT CALHOUN, JR.,

Appellant,

-against-

H. SPENCER KUPPERMAN, ESQ., CRAVATH, SWAINE & MOORE, its agents and others, THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD, its agents and others, SKADDEN, ARPS, SLATE, MEAGHER & FLOM, its agents, Michael H. Diamond, Henry P. Baer, J. Phillip Adams, Peggy L. Kerr and others, FREEMAN, MEADE, WASSERMAN & SHARFMAN, its agents and others,

Appellees,

On Appeal from the United States Court of Appeals for the Second Circuit

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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16(1)(a) and (c) of the Rules of this Court, appellee Cravath, Swaine & Moore moves that the appeal be dismissed or, in the alternative, that the judgment of the United States Court of Appeals for the Second Circuit be summarily affirmed.

STATEMENT

This is an appeal, pro se, by Robert Calhoun, Jr., husband of Alice M. Calhoun, from the judgment of the United States Court of Appeals for the Second Circuit affirming, on the opinion below, a judgment of the United States District Court for the Southern District of New York dismissing the action for failure to state a claim upon which relief could be granted. Copies of the judgment of the court of appeals and the unreported opinion of the district court are appended to the Jurisdictional Statement at pages 19 and 23, respectively.

A. Prior Action

On June 21, 1971, Alice M. Calhoun filed a complaint in the District Court for the Southern District of New York against her employer, Riverside Research Institute ("Riverside"), and another defendant, alleging that she had been denied a promotion by Riverside because of her race. Alice M. Calhoun v. Riverside Research Institute, 71 Civ. 2734. Cravath, Swaine & Moore, an appellee herein, appeared as attorneys for Riverside until April 7, 1972, when another firm was substituted for it with Riverside's consent and the court's approval. Cravath, Swaine & Moore did not participate in the proceedings in any way after the substitution. A copy of that consent and order (which was included in the appendix to the Brief for Defendant-Appellee Cravath, Swaine & Moore by leave of the court of appeals granted August 20, 1976) is appended

hereto.

Over two years after that substitution had taken place, Alice Calhoun and Riverside settled their action for $5,900 at a conference before the district court on June 26, 1974, and a stipulation and order of discontinuance was filed July 2, 1974. As shown by the transcript of that hearing, a portion of which is quoted in the district court's opinion, it appears that Mrs. Calhoun was satisfied with the settlement and understood that it was final.

B. Proceedings Herein

Appellant herein, Alice M. Calhoun's husband, charged that all the attorneys who had occasion to appear in Alice M. Calhoun v. Riverside, even during the preliminary stages of that action, conspired and "caused his wife to lose the damages that were warranted in her action", resulting in consequent injury to him. He invoked the Fourteenth Amendment to the Constitution and the Civil Rights Act of 1964, as amended, as the bases of the district court's jurisdiction, and purported to bring his action under 42 U.S.C. §§ 241 and 242.

The district court dismissed appellant's action on the ground that, "[s]ince plaintiff lacks standing, the complaint fails to state a claim upon which relief can be granted."

The court explained its reasoning as follows:

> "It is the general rule that an individual cannot sue for the deprivation of another's civil rights. McGowan v. Maryland, 366 U.S. 420, 429 (1961); Evain v. Conlisk, 364 F. Supp. 1188 (N.D. Ill.), aff'd, 498 F.2d 1403 (7th Cir. 1974). Only Mrs. Calhoun is in a position to raise any wrongs done to her. The statement that Mr. Calhoun was in turn harmed does not cure this defect."

The court of appeals affirmed the dismissal on the district court's opinion, and appellant seeks reversal of the judgment of affirmance.

ARGUMENT

Since the court of appeals did not hold any statute unconstitutional, an appeal does not lie from its judgment. See 28 U.S.C. §§ 1252, 1254(a).

Appellant, however, now purports to "appeal" pursuant to 28 U.S.C. § 1254(1), which provides for review of cases in the courts of appeals by writ of certiorari. Given the obvious improvidence of the appeal, this Court is empowered to treat the papers upon which it was taken as a petition for a writ of certiorari. 28 U.S.C. § 2103. This case, however, presents no important question of federal law, involves no conflict of the decision of the court of appeals with any other decision and patently involves no deviation from the accepted and usual course of judicial proceedings that should cause this Court even to consider exercising its power of supervision.

I

NO IMPORTANT QUESTION OF FEDERAL LAW OR CONFLICT OF DECISIONS IS PRESENTED.

Appellant, who admits to have sued appellees for allegedly "defrauding his wife, Alice M. Calhoun, of the benefits of her civil rights lawsuit" (Jurisdictional Statement, 3), is so plainly the wrong person to seek redress for the alleged wrong that no question of federal law is raised and no conflict of decisions is presented.

Nowhere in the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a-2000h, a statute dealing with an entirely different area of concern, does there appear a predicate for the claim asserted by appellant.

On its face, Section 1983 of Title 42 permits claims only by persons who, under color of state action, are deprived of federally conferred rights. Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970). If anyone was deprived of a federally conferred right in Alice M. Calhoun v. Riverside, a federal action, it was Alice M. Calhoun, not appellant, and any such deprivation was surely not under color of any state statute, ordinance, regulation, custom or usage.

Moreover, in part because of the "case or controversy" requirement of Article III of the Constitution, a party may not rely on a violation of the rights of another person to support a claim or a defense. McGowan v. Maryland, 366 U.S.

420, 429 (1961); Barrows v. Jackson, 346 U.S. 249, 255-57 (1953); see O'Shea v. Littleton, 414 U.S. 488, 493-496 (1974). A person such as appellant suing under Section 1983 may not assert a claim based upon deprivation of another's rights. Warth v. Seldin, 422 U.S. 490, 498-502 (1975); Evain v. Conlisk, 364 F. Supp. 1188, 1190 (N.D. Ill.), aff'd without opinion, 498 F.2d 1403 (7th Cir. 1973).

It is settled that Sections 241 and 242 of Title 18 are penal statutes that do not provide a basis for civil liability. E.g., United States ex rel. Savage v. Arnold, 403 F. Supp. 172, n. 1 at 173 (E.D. Pa. 1975); Brown v. Duggan, 329 F. Supp. 207, 209 (W.D. Pa. 1971).

It is thus beyond peradventure that appellant is without standing and stated no claim over which the district court had jurisdiction or upon which he could have been granted relief. This appeal thus raises no important question of federal law, if any question at all, involves no conflict of decisions and is entirely without merit.

II

THE PROCEEDINGS BELOW WERE CONDUCTED IN THE ACCEPTED AND USUAL COURSE, PROVIDING NO BASIS FOR THE INVOCATION OF THIS COURT'S SUPERVISORY POWERS.

There is simply no basis in the record for appellant's claim that aspects of the proceedings below were conducted fraudulently (see Jurisdictional Statement, 8).

It is particularly preposterous for appellant to charge appellee Cravath, Swaine & Moore with fraud in this action or in Alice M. Calhoun v. Riverside since other attorneys for Riverside had been substituted in place of Cravath, Swaine & Moore over two years before the time of the settlement of which appellant complains and, as the transcript of the settlement hearing shows, no one from Cravath, Swaine & Moore was present at the hearing.

Since Cravath, Swaine & Moore did not participate in the events complained of, there is all the more reason for affirming the judgment of the court of appeals with respect to it.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Court lacks jurisdiction over the appeal and that the questions presented by appellant are, in any event, completely lacking in merit. If this Court determines to treat appellant's papers as a petition for a writ of certiorari, the Court should deny certiorari or, in the alternative, summarily affirm the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

JAMES F. GLEASON, JR.,
Attorney for Appellee
Cravath, Swaine & Moore

April 15, 1977

APPENDIX

U.S. DISTRICT COURT
FILED APR 18 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALICE M. CALHOUN, Plaintiff, -against- RIVERSIDE RESEARCH INSTITUTE and COLUMBIA UNIVERSITY, Defendants.	CONSENT TO SUBSTITUTION OF ATTORNEYS Index No. 71 Civ. 2734 H.R.T.

IT IS HEREBY CONSENTED AND AGREED that Messrs. Meade, Wasserman & Plowden-Wardlaw of 551 Fifth Avenue, New York, New York 10017, be, and they hereby are, substituted in the place and stead of Cravath, Swaine & Moore of 1 Chase Manhattan Plaza, New York, New York 10005, as attorneys for Riverside Research Institute in the above-entitled action.

April 7, 1972

s/ Cravath, Swaine & Moore
Attorneys for Riverside
Research Institute

RIVERSIDE RESEARCH INSTITUTE
By s/Lawrence H. O'Neill

So Ordered. April 17, 1972
s/ H.R. TYLER, JR.
USDJ

[Acknowledgement omitted.]